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No. 204

In the Supreme Court of the United States

OCTOBER TERM, 1950

CAPITAL TRANSIT COMPANY, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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MEMORANDUM FOR THE UNITED STATES

The Government has petitioned for a writ of certiorari to review the decision of the Court of Appeals for the Third Circuit in *Howey* v. *Yellow Cab Co.*, 181 F. 2d 967. *United States* v. *Yellow Cab Co.*, No. 218 this Term. In that petition we have stated our view that the instant decision is correct and that the Court of Appeals for the Third Circuit has erred in holding that the Federal Tort Claims Act (1) permits

joinder of the United States as a third-party defendant and (2) consents to suit against the United States by a joint tortfeasor on a claim for contribution. We have pointed out, as does the petitioner in the instant case (Pet. 3-4), that the holding below is in square conflict with the Third Circuit decision on the question whether joinder of the United States as a third-party defendant is permissible under the Federal Tort Claims Act. We have noted also that the instant decision, holding joinder unauthorized, does not reach the question whether the United States is liable for contribution. We have urged, however, that the two questions are intimately related, that both are of general importance, and that both merit review by this Court.

For the reasons stated in our petition in *United States* v. *Yellow Cab Co., supra*, we do not oppose the granting of the present petition for a writ of certiorari.

Respectfully submitted,

ARNOLD RAUM,
Acting Solicitor General.

AUGUST 1950.

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